

**COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
FILE NOS. BFA-24055-042; BFA-24075-042; BFA-24119-042
PERMIT NO. 836-0264
NON-COMPLIANCE NOS. 41-1417; 41-1433; 41-0897
FAILURE TO ABATE CESSATION ORDER NOS. 04-1168; 04-1171; 04-1159**

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET,

PLAINTIFF,

VS.

SECRETARY'S FINAL ORDER

NALR COAL CORPORATION,

DEFENDANT.

* * * * *

THIS MATTER is before the Secretary upon the Report and Recommended Secretary's Order of James L. Dickinson, Hearing Officer, and the Secretary having considered the Report and Recommendation and any exceptions and responses filed thereto, and being sufficiently advised:

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. The Hearing Officer's Report and Recommended Secretary's Order entered in the record on [9/29/00], 2000 is **ADOPTED** and is incorporated by reference and made a part herein, as set forth verbatim.
2. The Defendant, NALR Coal Corporation, ("NALR") has **WAIVED ALL RIGHTS** to a formal hearing to contest this matter.
3. As evidenced by the entry of a Final Secretary's Order on September 14, 2000, in File Nos. FCO-24055-039, FCO-24075-039 and FCO-24119-039, the Defendant **VIOLATED**

the conditions of Surface Coal Mining and Reclamation Operations Permit No. 836-0264, the Kentucky Surface Mining Laws, and the Regulations promulgated pursuant thereto on Increment Nos. 1, 2, 3, 4, 5, and 6 as cited in Notice of Non-Compliance and Order for Remedial Measures Nos. 41-1417, 41-1433, and 41-0897, and Failure to Abate Cessation Orders Nos. 04-1168, 04-1171, and 04-1159.

3. NALR has **FAILED TO ABATE** the violations as set forth in Notice of Non-compliance Nos. 41-1417, 41-1433, and 41-0897, and Cessation Order Nos. 04-1168, 04-1171, and 04-1159.

4. Permit No. 836-0264 is **REVOKED**.

5. The following performance bonds on Increment Nos. 1, 2 3, 4, 5, and 6 are **HEREBY FORFEITED** to the Natural Resources and Environmental Protection Cabinet:

a. Increment 1 - BP-90032-38 for ninety-one thousand eight hundred dollars (\$91,800) with the Kentucky Bond Pool Commission (“the Bond Pool”) as surety and NALR as principal, and Surety Bond 1197-836-0264-01 and Rider for nineteen thousand five hundred dollars (\$19,500) with Cumberland Surety Insurance Company, Inc. (“Cumberland Surety”) as surety and NALR as principal.

b. Increment 2 - BP-90032-39 for eighty-five thousand two hundred dollars (\$85,200) with the Bond Pool as surety and NALR as principal, and Surety Bond 0697-836-0264-02 and Rider for thirteen thousand five hundred dollars (\$13,500) with Cumberland Surety as surety and NALR as principal.

c. Increment No. 3 -BP-90032-28 for thirty-seven thousand eight hundred dollars (\$37,800) with the Bond Pool as surety and NALR as principal, and Surety Bond 0497-836-

0264-03, for six thousand dollars (\$6,000) with Cumberland Surety as surety and NALR as principal.

d. Increment No. 4 - BP-90032-29 for thirty-nine thousand four hundred dollars (\$39,400) with the Bond Pool as surety and NALR as principal, and Surety Bond 0497-836-0264-04 for seven thousand five hundred dollars (\$7,500) with Cumberland Surety as surety and NALR as principal.

e. Increment No. 5 - BP-90032-30 for twenty-eight thousand dollars (\$28,000) with the Bond Pool as surety and NALR as principal, and Surety Bond 0497-836-0264-05 for two thousand five hundred dollars (\$2,500) with Cumberland Surety as principal and NALR as principal.

(f) Increment No. 6 - BP-90032-42 for four thousand five hundred dollars (\$4,500) with the Bond Pool as surety and NALR as principal, and Surety Bond 0497-836-0264-06 and Rider, for five thousand dollars (\$5,000) with Cumberland Surety as surety and NALR as principal

6. NALR Coal Corporation **IS INELIGIBLE** to receive another permit, begin another mining operation, or have any suspended permit or operation reinstated, until all requirements of the Kentucky Surface Mining Laws have been met.

7. NALR Coal Corporation **SHALL IMMEDIATELY PERFORM ALL REMEDIAL MEASURES NECESSARY TO ABATE ALL VIOLATIONS** cited in Notice of Non-compliance and Order for Remedial Measures Nos. 41-1417, 41-1433, and 41-0897, and Failure to Abate Cessation Orders Nos. 04-1168, 04-1171, and 04-1159, and to achieve the approved post-mining land use.

8. This is a **FINAL AND APPEALABLE** Order.

SO ORDERED this the _____ day of _____, 2000.

_____/s/ [11/1/00]_____
JAMES E. BICKFORD, SECRETARY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

APPEAL RIGHTS

In accordance with the provisions of KRS 350.0305 and KRS 350.032, any person or party aggrieved by a Final Order of the Secretary resulting from a hearing may obtain a review of the Final Order by filing in Circuit Court a Petition for Review. Such Petition must be filed within thirty (30) days after the entry or rendition of the Final Order, and a copy of the Petition must be served upon the Cabinet.

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2000, a true and accurate copy of the foregoing SECRETARY'S FINAL ORDER was mailed by first-class mail, postage pre-paid, to the following:

NALR COAL CORPORATION
364 BRANHAM HEIGHTS
PIKEVILLE, KY 41501-6703

NALR COAL CORPORATION
6736 ZEBULON HIGHTWAY # 1
PIKEVILLE KY 41501

and hand-delivered to:

Hon. Greg Higgins
Office of Legal Services
Natural Resources and
Environmental Protection Cabinet
Fifth Floor, Capital Plaza Tower
Frankfort, Kentucky 40601

DOCKET COODINATOR

DISTIBUTION:

JLD
LTS
Prestonsburg Regional Office
Division of Field Services
Bond Forfeiture/DSMRE
CHO/Order File

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NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET,

PLAINTIFF,

VS.

**HEARING OFFICER'S REPORT
AND
RECOMMENDED SECRETARY'S ORDER**

NALR COAL CORPORATION,

DEFENDANT.

* * * * *

THIS MATTER is before the Hearing Officer following the failure of the Defendant, NALR Coal Corporation ("NALR" or "Defendant"), to appear at a Show Cause Hearing scheduled on November 4, 1999. Based upon the record of this matter, the Hearing Officer makes the following Findings of Fact, Conclusions of Law and Recommendations for consideration by the Secretary:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On August 26, 1999, the Natural Resources and Environmental Protection Cabinet filed three Administrative Complaints against NALR Coal Corporation in File Nos. BFA-24055-042, BFA-24075-042 and BFA-24119-042 in which it sought, among other things, the revocation of Permit No. 836-0264 and the forfeiture of the performance bonds associated with Increment Nos. 1, 2, 3, 4, 5, and 6 of the permit. The Administrative Complaints were

consolidated into one action by an Order of the Hearing Officer on August 30, 1999, as captioned above, with BFA-24055-042 designated as the master file. At the time the Administrative Complaints were filed by the Cabinet, the Defendant had pending before the Office of Administrative Hearings, Petitions for Administrative Review, File Nos. FCO-24055-039, FCO-24075-039 and FCO-24119-039, in which it contested the issuance of the above referenced Notices of Non-Compliances and Cessation Orders. These Non-Compliances and Cessation Orders had been issued for violations occurring on Increments Nos. 1 through 6.

2. As evidenced by the exhibits to the Cabinet's Administrative Complaint, Permit No. 836-0264 is presently secured by performance bonds totaling three hundred forty thousand seven hundred dollars (\$340,700). BFA-24055-042 seeks the forfeiture of the performance bonds on Increment Nos. 1, 2, 3, 4, 5, and 6. BFA-24075-042 seeks the forfeiture of performance bonds on Increment Nos. 1, 2, and 6. BFA-24119-042 seeks the forfeiture of performance bonds on Increment Nos. 3 and 4.

3. Increment No. 1 is presently secured by BP-90032-38 for ninety-one thousand eight hundred dollars (\$91,800) with the Kentucky Bond Pool Commission ("the Bond Pool") as surety and NALR as principal, and by Surety Bond 1197-836-0264-01 and Rider for nineteen thousand five hundred dollars (\$19,500) with Cumberland Surety Insurance Company, Inc. ("Cumberland Surety") as surety and NALR as principal. Increment No. 2 is secured by BP-90032-39 for eighty-five thousand two hundred dollars (\$85,200) with the Bond Pool as surety and NALR as principal, and by Surety Bond 0697-836-0264-02 and Rider for thirteen thousand five hundred dollars (\$13,500) with Cumberland Surety as surety and NALR as principal. Increment No. 3 is secured by BP-90032-28, for thirty-seven thousand eight hundred dollars (\$37,800) with the Bond Pool as surety and NALR as principal, and by Surety Bond 0497-836-

0264-03, for six thousand dollars (\$6,000) with Cumberland Surety as surety and NALR as principal. Increment No. 4 is secured by BP-90032-29 for thirty-nine thousand four hundred dollars (\$39,400) with the Bond Pool as surety and NALR as principal, and by Surety Bond 0497-836-0264-04 for seven thousand five hundred dollars (\$7,500) with Cumberland Surety as surety and NALR as principal. Increment No. 5 is secured by BP-90032-30 for twenty-eight thousand dollars (\$28,000) with the Bond Pool as surety and NALR as principal, and by Surety Bond 0497-836-0264-05 for two thousand five hundred dollars (\$2,500) with Cumberland Surety as principal and NALR as principal. Increment No. 6 is presently secured by BP-90032-42 for four thousand five hundred dollars (\$4,500) with the Bond Pool as surety and NALR as principal, and by Surety Bond 0497-836-0264-06 and Rider for five thousand dollars (\$5,000) with Cumberland Surety as surety and NALR as principal.

4. On August 30, 2000, the Office of Administrative Hearings issued and served on the address supplied in the Administrative Complaints, which is the last known authorized address for NALR, a Consolidated Administrative Summons and Order in which this matter was assigned to this Hearing Officer and in which NALR was ordered to appear for a Prehearing Conference on October 4, 2000, at 3:00 p.m. EDT.

5. As evidenced by the return of the Return Receipt Card in the files maintained by the Office of Administrative Hearings, the Summons and Order were (a) sent to NALR by certified mail, postage prepaid and return receipt requested, and (b) accepted by NALR on August 31, 2000.

6. In light of the foregoing, service of the Administrative Complaint and Administrative Summons and Order on NALR was accomplished in conformity with the

Cabinet's regulations governing service of an Administrative Summons and was therefore proper. 405 KAR 7:091, Section 5(1)(c).

7. The Defendant failed to file an Answer or responsive pleading as required by 405 KAR 7:092 Section 5(3)(b).

8. A Prehearing Conference was held October 4, 1999. The Cabinet was represented by the Hon. Greg Higgins. The Defendant, NALR Coal Corporation, failed to appear. Alfred Raschella, an officer of NALR, and the Hon. Don Duff were present at the Prehearing Conference. However, Mr. Duff explained he was not entering an entry of appearance on behalf of NALR at that time. Since NALR did not appear through an attorney, the Cabinet requested the Hearing Officer enter an Order for NALR to appear and show cause as to why it should not be held in default.

9. On October 12, 1999, a Show Cause Order was entered and served ordering NALR to appear November 4, 1999, and show cause why it should not be deemed to have waived its right to an administrative hearing. The Order for Defendant to Appear and Show Cause was properly served on the Defendant in conformity with the Cabinet's regulation governing service of documents and other pleadings, 400 KAR 1:030 § 2.

10. On November 4, 1999, a Show Cause Hearing was held. The Cabinet was represented by the Hon. Greg Higgins. No appearance was made on behalf of the Defendant, NALR, to show cause why the Defendant should not be deemed to have waived its right to a hearing under 405 KAR 7:092, § 5. The Cabinet requested the entry of a Report and Order recommending that the Secretary grant the Cabinet the relief it requested in its Administrative Complaint. However, the Cabinet requested the Hearing Officer to not enter the Report and Recommended Order until such time as a Secretary's Order was entered in related administrative

hearings pertaining to the propriety of the issuance of the above referenced Non-Compliances and Cessation Orders.

11. On September 14, 2000, the Secretary entered a Final Order in File Nos. FCO-24055-039, FCO-24075-039, and FCO-24119-039 and affirmed the issuance of all of the above referenced Non-Compliances and Cessation Orders.

12. Pursuant to 405 KAR 7:092, § 5, if the order to show cause is not satisfied as required, the Hearing Officer shall recommend to the Secretary the entry of a final order in conformity with the relief requested by the Cabinet in its Administrative Complaint.

13. Under the provisions of 405 KAR 7:092, § 5, NALR is deemed to have admitted the allegations made by the Cabinet in its Administrative Complaint and that NALR has failed to demonstrate why a Secretary's Order adverse to its interests should not be entered which would grant the Cabinet the relief it requested in its Administrative Complaint.

II. RECOMMENDATIONS

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends that the Secretary enter the attached recommended Order granting the Cabinet the relief requested in this consolidated action.

SO RECOMMENDED this the _____ day of _____, 2000

_//S// [9/29/00]
JAMES L. DICKINSON
HEARING OFFICER
OFFICE OF ADMINISTRATIVE HEARINGS

EXCEPTION AND RESPONSE RIGHTS

Pursuant to KRS 350.0301, any party may file exceptions to this Report and Recommendations within fourteen (14) days of service of this Report. Any party may file a Response to any Exceptions within twenty-one (21) days of service of this Report. The Secretary will then consider this Report, any Exceptions, any Responses, the Recommended Order and decide the case.

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2000, a true and accurate copy of the foregoing HEARING OFFICER'S REPORT AND RECOMMENDED SECRETARY'S ORDER was mailed by first-class mail, postage pre-paid, to the following:

NALR COAL CORPORATION
364 BRANHAM HEIGHTS
PIKEVILLE, KY 41501-6703

NALR COAL CORPORATION
6736 ZEBULON HIGHTWAY # 1
PIKEVILLE KY 41501

and hand-delivered to:

Hon. Greg Higgins
Office of Legal Services
Natural Resources and
Environmental Protection Cabinet
Fifth Floor, Capital Plaza Tower
Frankfort, Kentucky 40601

DOCKET COORDINATOR

DISTRBUTION:

JLD
LTS
Prestonsburg Field Office
Division of Field Services

